U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: NOV 25 2014 Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner seeks the beneficiary's classification as an "alien of extraordinary ability" in athletics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

For the reasons discussed below, the petitioner has not established the beneficiary's eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence of a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3) or evidence that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) either as a coach or, in the alternative, as an athlete. As such, the petitioner has not demonstrated that he is one of the small percentage who are at the very top in the field of endeavor, and that he has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner's appeal.

The petitioner's priority date established by the petition filing date is October 29, 2013. On April 28, 2014, the director issued the petitioner a request for evidence (RFE). After receiving the petitioner's response to the RFE, the director issued his decision on June 9, 2014. On appeal, the petitioner submits a brief with additional documentary evidence.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
>
> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The submission of evidence relating to at least three criteria does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS,* 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming USCIS' proper application of *Kazarian*), *aff'd,* 683 F.3d. 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

II. ANALYSIS

A. Previously Approved O-1 Petition

While U.S. Citizenship and Immigration Services (USCIS) has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions

on behalf of the beneficiary, we would not be bound to follow the contradictory decision of a service center as the law is clear that an agency is not bound to follow an earlier determination as to a visa applicant where that initial determination was based on a misapplication of the law. *Glara Fashion, Inc. v. Holder*, 11 CIV. 889 PAE, 2012 WL 352309 *7 (S.D.N.Y. Feb. 3, 2012); *Royal Siam v. Chertoff*, 484 F.3d 139, 148 (1st Cir.2007); *Tapis Int'l v. INS*, 94 F.Supp.2d 172, 177 (D.Mass.2000)) (Dkt.10); *Louisiana Philharmonic Orchestra v. INS,* 44 F.Supp.2d 800, 803 (E.D.La.1999), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

It is also important to note that the petitioner frequently references evidence that was provided in previous proceedings related to nonimmigrant petitions filed on the beneficiary's behalf. However, the nonimmigrant petition is not part of the record and if the petitioner had wanted USCIS to consider any evidence supporting that petition, it should have resubmitted it with the present petition.

B. Methods of Demonstrating Eligibility

The issue of whether the beneficiary qualifies as an alien of extraordinary ability as either a coach or an athlete through direct or comparable evidence pursuant to 8 C.F.R. § 204.5(h)(3), (4), is a separate question from whether he seeks to work in the United States within his area of expertise pursuant to 8 C.F.R. § 204.5(h)(5). As such, our analysis will address the following questions:

- Whether the petitioner has demonstrated that the beneficiary can satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(i) through (x) as a coach;
- Whether the petitioner has demonstrated that the beneficiary can satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(i) through (x) as an athlete;
- Whether the petitioner has demonstrated that the standards at 8 C.F.R. § 204.5(h)(3)(i) through (x) do not readily apply to the beneficiary's occupation, which would enable the beneficiary to rely on comparable evidence according to 8 C.F.R. § 204.5(h)(4);
- Whether the petitioner has submitted evidence that is comparable pursuant to 8 C.F.R. § 204.5(h)(4); and
- Whether the petitioner has demonstrated that the beneficiary is coming to the United States to continue work in the area of expertise pursuant to 8 C.F.R. § 204.5(h)(5).

In addressing the above issues, the petitioner combines USCIS policy relating to an athlete who is claiming that coaching is in his area of expertise with a separate USCIS policy relating to comparable evidence, which utilizes an Olympic coach as an example. The first policy relates to the regulatory requirement that the beneficiary is coming to the United States to continue work in the area of expertise pursuant to 8 C.F.R. § 204.5(h)(5). The other policy addresses a petitioner's ability to rely on comparable evidence under 8 C.F.R. § 204.5(h)(4). As these are two separate policies addressing two separate requirements, we will consider them separately.

Chapter 22.2(i)(1)(C) of the USCIS Adjudicator's Field Manual (AFM), which pertains to an extraordinary athlete who claims that coaching is within his area of expertise, states:

> In general, if a beneficiary has clearly achieved recent national or international acclaim as an athlete and has sustained that acclaim in the field of coaching/managing at a national level, adjudicators can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the beneficiary's area of expertise.

The petitioner relies on this paragraph for the proposition that USCIS should consider the beneficiary's achievements as an athlete in assessing whether the beneficiary meets three criteria as a coach. This passage of the AFM, however, addresses the employment requirement at 8 C.F.R. § 204.5(h)(5), not the initial eligibility requirements at 8 C.F.R. § 204.5(h)(3) and (4). Specifically, the passage allows that if the petitioner first demonstrates that the beneficiary is eligible as an extraordinary athlete (under 8 C.F.R. § 204.5(h)(3) or (4) with evidence indicative of recent acclaim), and the beneficiary is coaching national or international-level competitors, then USCIS may find that the beneficiary is an alien of extraordinary ability whose area of expertise includes coaching under 8 C.F.R. § 204.5(h)(5). Accordingly, this passage in the AFM is only relevant when the petitioner has not demonstrated that the beneficiary satisfies the initial evidence requirements under 8 C.F.R. § 204.5(h)(3) or (4) as a coach, but has satisfied those initial evidence requirements as an athlete.

C. Evidentiary Criteria

The petitioner has addressed the criteria we discuss below. With respect to the evidence that does not relate to those criteria, the appellate brief asserts that it is the responsibility of USCIS to determine the appropriate criteria under which to consider such evidence and makes no attempt to suggest how that evidence might relate to the remaining criteria. A review of all the evidence reveals no documents that satisfy the plain language requirements of the remaining criteria and the appellate brief provides no bases to conclude otherwise. Therefore, we will address that remaining evidence below in the context of the comparable evidence discussion pursuant to 8 C.F.R. § 204.5(h)(4).

i. Coaching Achievements

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

This criterion contains several evidentiary elements the petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the alien is the recipient of the prizes or the awards. The clear regulatory language requires that the prizes or the awards are nationally or internationally recognized. The plain language of the regulation also requires the petitioner to submit evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to an event or to a group. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The petitioner provided evidence, as comparable evidence, relating to the beneficiary's awards as a tennis competitor, the beneficiary's rankings as a tennis competitor, and being named to collegiate all-

conference teams as a tennis competitor. The petitioner also submitted the rankings of the beneficiary's students as tennis competitors. The director determined that the petitioner did not meet the requirements of this criterion.

As discussed above, the AFM discussion of an athlete's area of expertise does not suggest a petitioner may rely on the beneficiary's athletic achievements to meet a criterion as a coach. As the petitioner did not submit evidence relating to prizes or awards for the beneficiary's performance as a coach, it has not submitted evidence that meets the plain language requirements of this criterion. We will consider below whether the petitioner has established that the beneficiary meets the necessary three criteria as an athlete. We will also address below the petitioner's assertion that the beneficiary's students' achievements and his rankings constitute comparable evidence.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

The petitioner initially claimed eligibility under this criterion, but acknowledged in response to the director's RFE that the beneficiary's membership in the did not meet the plain language requirements of this criterion. The director determined that the petitioner did not meet the requirements of this criterion. As the petitioner does not assert eligibility under this criterion on appeal, the petitioner has abandoned that claim within these proceedings. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005). We will consider below the petitioner's assertion that the beneficiary's registry and collegiate honors serve as comparable evidence.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

This criterion contains three evidentiary requirements the petitioner must satisfy. First, the published material must be about the beneficiary and the contents must relate to the beneficiary's work in the field under which he seeks classification as an immigrant. The published material must also appear in professional or major trade publications or other major media. Professional or major trade publications are intended for experts in the field or in the industry. To qualify as major media, the publication should have significant national or international distribution and be published in a predominant national language. The final requirement is that the petitioner provide each published item's title, date, and author and if the published item is in a foreign language, the petitioner must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The majority of the evidence submitted under this criterion consisted of media articles relating to the beneficiary's performance as a tennis competitor rather than as a tennis coach. The director determined that the petitioner did not meet the requirements of this criterion. The petitioner provided one article relating to the petitioner's performance as a tennis coach, an August 6, 2009 article from the

titled, " This article is about the beneficiary and related to his work in the field. The article discusses his work both as a competitor and as a coach. The petitioner did not assert that this media is a professional or major trade publication. The petitioner provides one form of evidence from relevant to the circulation statistics for the . The document only measures the circulation statistics within the state of Illinois. The petitioner has not submitted evidence that such local or regional statistics are commensurate with a form of major media, and the record lacks evidence that might establish this publication is distributed outside the state. Publications with only a regional reach are not generally considered to be major media. Consequently, the petitioner has not established that the is a form of major media. Furthermore, while the evidence reflects that the has a circulation of 35,014, twelve publications on the list have greater circulation statistics, some of which range in the hundreds of thousands. The petitioner has not established that the is a form of major media.

Consequently, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

The plain language of this regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. The first is evidence of the beneficiary's contributions in his field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that the beneficiary's contributions are original. The evidence must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). Contributions of major significance connotes that the petitioner's work has significantly impacted the field. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia*, 4 F. Supp. 3d at 134. The petitioner must submit evidence satisfying all of these elements to demonstrate the beneficiary meets the plain language requirements of this criterion.

The petitioner requested that the letters of support be considered as comparable evidence. However, Chapter 22.2(i)(1)(A) of the AFM precludes the consideration of letters as comparable evidence stating: "[C]laims that USCIS should accept witness letters as comparable evidence are not persuasive." Although the petitioner did not request that the letters of support be considered under this criterion, as the AFM precludes considering letters as comparable evidence, and the letters address the beneficiary's accomplishments, we will consider them here.

Head Tennis Coach for , states in his letter dated April 3, 2008, that as a Graduate Assistant Coach, the beneficiary benefited the university's tennis program. Mr.

does not, however, affirm an impact in the petitioner's field based on his performance as a tennis coach. The May 16, 2008 letter from , for the petitioning organization reflects that students the beneficiary has instructed have improved and that the beneficiary's work is very valuable to the petitioner. Mr. does not explain how the beneficiary has impacted the field, such as by introducing widely adopted coaching techniques.

The May 10, 2008 letter from one of the beneficiary's students, indicates that she has worked with the beneficiary for six months and that he has helped her game improve. Ms. also indicates that the beneficiary has helped her prepare for some major national tournaments. Although the petitioner provided evidence that Ms. was ranked number one in the rankings, the petitioner has not provided evidence reflecting any national ranking for Ms. Without such evidence, the petitioner has not demonstrated that the beneficiary is instructing those who compete at a national level. Regardless, to meet this criterion, the petitioner must demonstrate that the petitioner has made contributions of major significance in the field rather than for individual competitors. Another of the beneficiary's students, recounted how she improved under the beneficiary's tutelage within her March 27, 2008 letter. While she sufficiently explains her achievements while playing at , such examples of individual improvement fall short of establishing that the petitioner has made original contributions of major significance in the field as a coach.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the contributions be "of major significance in the field" rather than limited to one's immediate employer and a few of its customers. Aside from the petitioner's clients and the tennis players, there is no documentary evidence showing that the petitioner's work has been seminal, or that it otherwise equates to an original contribution of major significance in the field. An alien must have demonstrably impacted his field in order to meet this regulatory criterion. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia*, 4 F. Supp. 3d at 134. The reference letters submitted by the petitioner do not provide specific examples of how the petitioner's work has significantly impacted the field at large or otherwise constitutes original contributions of major significance.

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). Consequently, the petitioner has not submitted evidence that meets the requirements of this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the petitioner to submit evidence of a "high salary or other significantly high remuneration for services, in relation to others in the field." Average salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. The petitioner must submit documentary evidence of the earnings of those in the beneficiary's occupation performing similar work

at the top level of the field.[1] The petitioner must present evidence of objective earnings data showing that the beneficiary has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering a National Hockey League (NHL) enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

The petitioner provided an October 14, 2013 letter reflecting the beneficiary's wage rate in addition to a reference to information originating from the United States Bureau of Labor Statistics (BLS) wage estimates for coaches and scouts. The petitioner's letter indicates that the beneficiary is compensated at $42 per hour, or approximately $90,000 annually. Although the petitioner provided a web address, that address does not lead to the BLS website as the petitioner asserts. Regardless, the BLS collects data on wage and salary workers in nonfarm establishments in order to produce employment and wage estimates for about 800 occupations. The BLS produces occupational employment and wage estimates for over 450 industry classifications at the national level. The employment data are benchmarked to average employment levels.[2] The plain language of the regulation requires the petitioner to establish the beneficiary's salary is high when compared to others in the field. As such, average statistics limited to one particular area do not meet this requirement.

Within the initial filing statement, the petitioner asserts that the beneficiary commands "one of our highest rates ever, at $78.00 per hour for members and $118.00 per hour for non-members." At issue, however, is not what the petitioner charges its members and non-members for lessons with the beneficiary or how that rate compares with the petitioner's other coaches. Rather, the petitioner must demonstrate that the beneficiary earns a high salary or significantly high other remuneration in comparison with others in his field.

As such, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

Summary as a Coach

The petitioner has not satisfied the antecedent regulatory requirement to satisfy three of the criteria as a coach.

---

[1] While we acknowledge that a district court's decision is not binding precedent, we note that in *Racine v. INS*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated, "[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with . . . the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99."

[2] *See* http://www.bls.gov/oes/oes_emp.htm#estimates.

ii. Athletic Achievements

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

We have discussed the plain language requirements for this criterion above. In addition to submitting documentation of various competitions where the beneficiary competed under this criterion, the petitioner asserts that the beneficiary's rankings should be considered as comparable evidence. However, those rankings are directly relevant to this criterion as indicative of the significance of the beneficiary's results at various competitions. In July 2009, the petitioner documents that the beneficiary's ranking was out of 1,869 male professional tennis players. Based on the evidence in the aggregate, including the rankings, the petitioner has submitted sufficient evidence to meet this criterion's requirements.

As such, the petitioner has submitted evidence that meets all of the regulatory requirements under this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

As discussed above, the petitioner does not assert eligibility under this criterion on appeal and, accordingly, has abandoned that claim within these proceedings. *See Sepulveda*, 401 F.3d at 1228, n. 2. We will consider below the petitioner's assertion that the beneficiary's registry and collegiate honors serve as comparable evidence.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

We have detailed the plain language requirements for this criterion above. The petitioner submits several articles relating to the beneficiary as an athlete. While not all of the published material is about the beneficiary and relating to his work in the field, several are and we will consider those articles under this criterion. The petitioner's appellate brief, pages 17-18, states:

> In the absence of a clear definition of the term, "major media", the [petitioner] adheres to the view that the publications which it presented in connection with [the beneficiary's] performances as a tennis player constitute published material in major media, because they can be obtained on the Web and are not limited to any physical location and are not intended as advertising copy. It is also the position of the [petitioner] that [the director's] evidentiary demands regarding confirmation of the attendant circumstances surrounding these publications has the effect of creating arbitrary hurdles and evidentiary burdens for [the

petitioner] and as such are inconsistent with clear Congressional intent regarding the EB-1A classification.

While Internet sites are technically accessible nationally and even internationally, not every Internet site has the same degree of national or international influence. The mere act of posting an article online does not transform what is otherwise a local or regional publication into major media. The record lacks evidence that the sites in which the submitted articles appear routinely attract national or international attention. The petitioner, through counsel, cites to USCIS policy memoranda as well as the AFM in several instances throughout the record of proceeding. The guidance relating to this criterion as it appears in the most recent policy memorandum updating the AFM states:

> Evidence of published material in professional or major trade publications or in other major media publications about the alien should establish that the circulation (*on-line* or in print) is high compared to other circulation statistics and show who the intended audience is, as well as the title, date and author of the material.

Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 PM-602-0005.1 (Dec. 22, 2010) (Emphasis added.) The director's RFE requested the same types of corroborating evidence that are listed in the quote above. The petitioner's appellate brief discusses two articles from the and the Both articles are about the beneficiary and relate to his work in the field as an athlete. While the petitioner did provide one form of evidence from relevant to the circulation statistics for the it did not provide such evidence for the

We have already discussed the shortcomings of the evidence pertaining to the article above. As the petitioner has not demonstrated that this publication is major media, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

We have discussed the plain language requirements for this criterion above. For the reasons discussed earlier, letters are not themselves comparable evidence. *See* AFM Chapter 22.2(i)(1)(A). Rather, insofar as the letters address individual criteria, we will consider them under those criteria. Similar to the letters discussing the beneficiary as a coach under this same criterion above, the letters that reference the beneficiary as an athlete or a competitor do not describe the manner in which the beneficiary has made original contributions of major significance in his field. Rather, the letters describe how the beneficiary contributed to collegiate tennis teams and his own athletic career. For example, , the Men's Tennis Coach at the discussed the beneficiary's collegiate rankings while attending the university as well as stating that the tennis team was ranked in the top 15 teams in the country during the period that the beneficiary was a team member. Mr. did not, however, describe any original contributions that the beneficiary had in the field.

Regarding the beneficiary's impact in professional tennis, the athlete-oriented letters provide the beneficiary's rankings among the world's tennis players, which do not constitute an original contribution of major significance. None of the letters provide details about an original concept, strategy, or other improvement that the beneficiary introduced as a tennis player that could meet this criterion's requirements. Nor do the letters assert that the beneficiary set a record or otherwise achieved an original accomplishment as a tennis player. Therefore, we have considered the letters and applied them under this criterion relating to the beneficiary's performance as an athlete.

Based on the foregoing, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

Summary as an Athlete

The petitioner has not satisfied the antecedent regulatory requirement to satisfy three of the criteria as an athlete.

iii. Comparable Evidence

The regulation at 8 C.F.R. § 204.5(h)(4) allows an alien to submit comparable evidence if the petitioner is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i) through (x) do not readily apply to his occupation. Further, the AFM states in pertinent part: "The petitioner should explain . . . why the evidence it has submitted is 'comparable' to that required under 8 CFR 204.5(h)(3)."

The petitioner asserts that evidence relating to the beneficiary as a coach based on his student's achievements is qualifying comparable evidence. The petitioner provides ranking data for each student. The petitioner only claims that three students were nationally or internationally ranked at the adult level, The only evidence of these rankings in the record is for Mr. , and that evidence derives from *Wikipedia*. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited Internet site.[3] *See Lamilem Badasa v. Michael Mukasey,* 540 F.3d 909 (8th Cir. 2008). Therefore, this documentation has not probative value within the present proceedings. Assertions in an appellant brief do not constitute

[3] Online content from *Wikipedia* is subject to the following general disclaimer, "WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields. *See* http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on November 18, 2014, a copy of which is incorporated into the record of proceeding.

evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Further, the petitioner asserts that other students, were nationally ranked in their age division, but only provided evidence relating to the rankings. The record lacks evidence of either player's claimed national ranking. As stated above, assertions in an appellant brief do not constitute evidence. *Id.*

Notably, the petitioner references the example in the AFM that states: "An alien beneficiary who is an Olympic coach whose athlete wins an Olympic medal while under the alien's principal tutelage would likely constitute evidence comparable to that in 8 CFR 204.5(h)(3)(v)." However, the petitioner has not submitted evidence that the beneficiary is an Olympic coach, nor did it demonstrate that any of his students have won an Olympic medal while under his principal tutelage. While the submitted evidence is relevant as potential comparable evidence in the context of the contributions criterion at 8 C.F.R. § 204.5(h)(3)(v), the petitioner has not submitted evidence sufficient to demonstrate that the evidence of the beneficiary's students' achievements is in fact comparable to the evidentiary requirements set forth at 8 C.F.R. § 204.5(h)(3)(v).

The petitioner claims comparable evidence relating to the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii) through being named to the All-conference second team in the collegiate group Southeastern Conference (SEC). This evidence is relevant as potentially comparable with the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ii). However, the petitioner did not provide any information relating to the selection guidelines from the SEC relating to the beneficiary's selection to the second all-conference team. As such, the petitioner has not submitted probative evidence that the beneficiary being named to the second all-conference team is in fact comparable evidence to a criterion where selection based on outstanding achievements is a required element.

The petitioner also requests that several letters be considered as comparable evidence in the appellate brief. However, as discussed above, the AFM excludes letters as comparable evidence. *See* AFM Chapter 22.2(i)(1)(A). Therefore, we have considered the letters under the criteria they address.

D. Continuing in the Area of Expertise

The petitioner claims that the beneficiary should be able to claim coaching as his area of expertise based first on his achievements as a competitor, and second on the performance of those he coaches. In order to reach the issue of whether the beneficiary has satisfied the employment requirements at 8 C.F.R. § 204.5(h)(5), the petitioner must first demonstrate that the beneficiary can qualify for this classification as a competitor. *See* AFM Chapter 22.2(i)(1)(C). The petitioner, however, did not submit probative evidence that he qualifies for the classification as a competitor. Consequently, the issue of whether he is coaching at the national level is moot such that coaching is within his area of expertise is also moot.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. As the petitioner has not done so, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a finding that the petitioner has not demonstrated the level of expertise required for the classification sought.[4]

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

---

[4] We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).